IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1224 of 1980
With
FIRST APPEAL NO.1255 OF 1984
With
CIVIL APPLICATION NO.43 OF 2003
In
FIRST APPEAL NO.1255 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHALAL VITHALDAS

Versus

JAMNAGAR DISTRICT PANCHAYAT

Appearance:

1. First Appeal No. 1224 of 1980
MR JD AJMERA for appellant No. 1
Mr.Dhirendra Mehta for
MR PV HATHI for Respondent No. 1-2
Mr.R.M.Chauhan, learned AGP for Respondent No. 3

2. First Appeal No.1255 of 1984
Mr.Dhirendra Mehta for
Mr.P.V.Hathi for appellants.

Mr.J.D.Ajmera for respondent

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/01/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Appellant Nathalal original plaintiff in Special Civil Suit No.87/75 has filed Appeal being First Appeal No.1224/80 and challenged the judgment and decree passed by the learned Joint Civil Judge (SD), Jamnagar dated 29.1.80 in Special Civil Suit No.87/75, as the suit filed by the appellant plaintiff was dismissed with costs. The appeal was admitted as per order dated 20.11.80. As found from the said Appeal, the appellant original plaintiff has filed suit against the defendant No.1 Jamnagar District Panchayat for recovery of a sum of Rs.34,000/-- with further interest at the rate of 12% per annum with costs by joining District Development Officer of Jamnagar District Panchayat as well as State of Gujarat being respondents Nos.2 and 3. The Suit for recovery of the amount was dismissed by the learned trial Judge and the learned trial Judge has recorded finding that the suit filed by the plaintiff against defendant No.3, namely, State of Gujarat was misconceived and issue put forward by the plaintiff that the defendant has committed breach of term of contract was negatived. In short the learned trial Judge, on the basis of the evidence led before him, has not found favour with the plaintiff and accordingly dismissed the suit.

2. First Appeal No.1255 of 1984 is filed by Jamnagar District Panchayat and another against Nathalal wherein the Panchayat has challenged the judgment and decree passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar dated 23.9.83 in Special Civil Suit No.35/80 and as found from the judgment and decree under challenge, the learned trial Judge has dismissed the suit of the Jamnagar District Panchayat with costs.

3. Appeal being First Appeal No.1255/84 was admitted as back as on 19.9.84. As found from the order sheet that when the said Appeal was notified earlier on 22.11.2002 the court has passed order, which reads as under:-

"Stand over to 02/12/2002. To be listed alongwith First Appeal No.1224/1980."

The office has also made submission in the Appeal filed by the Jamnagar District Panchayat i.e. First Appeal No.1255/84 that the said Appeal was not ready and the objection was only to the effect that the pleadings are not supplied and earlier on 24.4.2002 time to supply pleadings was granted upto 7.5.2002. Accordingly Mr. Hathi, learned advocate, has also furnished pleadings within time.

4. Mr.J.D.Ajmera, learned advocate, who appeared for the appellant in First Appeal No.1224/80 has informed us that Nathalal sole appellant original plaintiff had expired long back and according to him that he has filed Application for bringing heirs on record of the said appellant. We have granted time to furnish the number of the Application or even furnish copy of the Application, which he has filed for bringing heirs of deceased Nathalal. However, inspite of granting time Mr. Ajmera could not submit the number of the Application nor he has submitted before us a copy of the Application, which he has filed in the present Appeal for bringing heirs on record and Mr.Ajmera is not in a position to point out to this court that any Application for bringing heirs is filed on behalf of the appellant. As found from the Application for bringing heirs filed by Jamnagar District Panchayat i.e. Civil Application No.43/2003 in First Appeal No.1255/84 wherein the applicants have also annexed the xerox copy of the death Certificate of deceased Nathalal, which shows that the said Nathalal had expired as back as on 9.4.1987. The said deceased Nathalal had expired at Okha (Jamnagar District). In view of the fact that the sole appellant Nathalal in First Appeal No.1224/80 has expired and no steps were taken by the appellant to bring the heirs of the said deceased Nathalal in the Appeal filed by him, the Appeal is already abated due to death of appellant Nathalal on 9.4.87. Appeal being First Appeal No.1224/80 accordingly stands abated.

5. As the First Appeal No.1255/84 was ordered to be heard with First Appeal No.1224/80, wherein Jamnagar District Panchayat has challenged the judgment and decree of the trial court passed in Special Civil Suit No.35/80, which was filed by the appellant - Jamnagar District Panchayat against the aforesaid defendant Nathalal. When the Appeals were notified earlier before the court on 2.12.2002, it transpires that the Division Bench has passed order, which reads as under:-

"Learned counsel for the parties state that the

original defendant Shri Nathalal Vithaldas has expired and, therefore, his heirs are required to be brought on record. At their request, S.O. to 23rd Dec.2002."

6. Accordingly an Application being Civil Application No.43/2003 is filed by the appellant Jamnagar District Panchayat for bringing heirs on record of the deceased Nathalal. The said Application is filed on 13.1.2003 supported with an affidavit of P.R.Patel, Executive Engineer, Irrigation Division, District Panchayat, Jamnagar dated 30.12.2002 enclosing the death certificate issued by the authority to show that the respondent Nathalal had expired on 9.4.1987 at Okha. A request was made for placing the said Application for orders and accordingly the application was placed before us on 17.1.2003 and considering the joint request made by the counsel appearing in the matter, the said Application alongwith the Appeals were placed for hearing on 20.1.2003 and accordingly this Application alongwith Appeals were reached for final hearing before us. Therefore, we have to first consider whether Application being Civil Application No.43/2003 for bringing heirs of respondent deserves to be entertained or not. As observed earlier in First Appeal No.1224/80 we have already passed order that as no steps were taken for bringing heirs of the said appellant Nathalal, the said Appeal was abated. In this Application for bringing heirs of Nathalal on record, office has raised objection that the Application is filed where the delay is more than 15 years and 189 days. Ground for delay is highlighted in the Application, mainly found at paragraph 4 of the Application. In short the ground alleged is that there was no knowledge to the applicant appellant plaintiff about the death of sole respondent Shri Nathalal and the officer of the District Panchayat go on changing from time to time and they are not aware about all the proceedings pending in different courts of any of the parties and further that even the death of Nathalal was not informed by the advocate, who had filed Appeal being First Appeal No.1224/80. Considering this fact and even on examining the contentions on merits, wherein the appellant Jamnagar District Panchayat has challenged the judgment and decree wherein the learned trial court has dismissed the suit filed by the Panchayat, we are not expressing in detail, but the learned trial Judge has dismissed the suit of the Jamnagar District Panchayat on the point of limitation and the finding recorded by the learned trial Judge is reflected in paragraph 7 of the judgment, which shows that the suit filed by the District Panchayat was time barred. Application for bringing

heirs on record is hopelessly time barred and in our view, no sufficient cause is shown for such delay occurred in bringing heirs of deceased Nathalal on record and the applicants had prayed that widow of Nathalal i.e. Smt.Rambhaben be brought on record as heir of deceased Nathalal. Considering the submission made before us as well as considering the Application for bringing heirs on record, we are of the view that the Application for bringing heirs on record of the sole respondent is filed after a delay of 15 years and 189 days, which in our view is hopelessly time barred and the Application deserves to be rejected and accordingly Civil Application No.43/2003 is hereby rejected as there is no sufficient cause for delay in bringing heirs of deceased Nathalal on record.

7. The result is that the sole respondent had expired on 9.4.1987 and accordingly the Appeal being First Appeal No.1255/84 stands abated and the same stands disposed of accordingly.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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